

U.S. Department of Labor

Employment Standards Administration
Office of Labor-Management Standards
Detroit District Office
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July 17, 2006

Mr. Bill Nalepka, Treasurer
National Education Association
Local 103458, Adrian College Association of Professors
110 South Madison Street
Adrian, MI 49221-2575

Re: Case Number: ~~XXXXXXXXXX~~

Dear Mr. Nalepka:

This office has recently completed an audit of the Adrian College Association of Professors (ACAP) under the Compliance Audit Program (CAP) to determine your organization's compliance with the provisions of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA). As discussed during the exit interview with you on July 10, 2006, the following problems were disclosed during the CAP. The matters listed below are not an exhaustive list of all possible problem areas since the audit conducted was limited in scope.

Recordkeeping Violations

The CAP, which covered the fiscal year ending August 31, 2005, disclosed several recordkeeping violations of Title II of the LMRDA. Section 206 requires, among other things, that the president and treasurer or corresponding principal officers of each labor organization maintain adequate records for at least five years by which each receipt and disbursement of funds, as well as all account balances, can be verified, explained, and clarified. As a general rule, all records used or received in the course of union business must be retained.

This includes, in the case of disbursements, not only the retention of original bills, invoices, receipts, and vouchers, but also adequate additional documentation, if necessary, showing the nature of the union business requiring the disbursement, the goods or services received, and the identity of the recipient(s) of the goods or services. In the case of receipts, the date, amount, purpose, and source of all money received by

the union must be recorded in at least one union record. Bank records must also be retained for all accounts.

The audit revealed the following recordkeeping violations:

Officer Expenses

The date, amount, and business purpose of every expense must be recorded on at least one union record. Where meal expenses are incurred, the names of individuals present and the locations (names of restaurants) must be recorded. Union officers failed to maintain adequate documentation for the single reimbursed expense that occurred during the fiscal year. The check written to reimburse Ms. Caldwell for books purchased had insufficient supporting documentation, as the receipt maintained did not account for the full amount of the check.

Other

The investigation revealed that of the some of the checks issued by the ACAP during the audit period are not supported by receipts or other adequate documentation. Some examples follow:

- Check number [REDACTED] was dated 10/27/2004 and payable to Red Lobster in the amount of \$100. While the memo line of the check stated that the check was for gift certificates, the records contained no supporting documents that could verify the purpose of this disbursement.
- Check number [REDACTED] was dated 4/15/05 and payable to the State of Michigan for \$20. While the memo line of the check stated that the check was for the annual report, the records contained no supporting documents that could verify the purpose of this disbursement.
- Check number [REDACTED] was dated 6/13/05 and payable to Adrian College in the amount of \$27.45. While the memo line of the check stated that the check was for copies, the records contained no supporting documents that could verify the purpose of this disbursement.

The recordkeeping requirement for disbursements such as these can be most easily satisfied with a sufficiently descriptive bill, invoice, receipt, etc., that identifies the vendor's name and address, the date and amount of the transaction, and the goods or services provided. If a receipt is not sufficiently descriptive, then the union should note

the missing information on the receipt. If the business purpose of the disbursement or the identity of the recipient(s) of the goods or services is not self-evident, then the union must note such information on the receipt or some other record. If a receipt is not provided by a vendor, then the union must create a record containing the above information with a notation that original documentation was not provided. The only exception to this policy is for expenses generated by the union (e.g., salary, lost time, etc.) which, nonetheless, must be supported by some other type of documentation (e.g. lost time vouchers, payroll records, executive board and membership authorizations and/or approvals, etc.).

The audit also revealed that the local failed to consistently maintain detailed meeting minutes for the executive board and membership meetings. In several instances, the local failed to maintain any minutes at all. Had detailed minutes been maintained, they might have provided information that would have helped to explain or clarify the above financial transactions.

I recommend the union keep a cash disbursements journal which lists in chronological order all expense transactions during each month. A twelve-month summary ledger should also be maintained to accumulate the monthly cash disbursements totals. These records will also facilitate the preparation of the union's annual financial report that it is required to file with OLMS.

Additionally, at the time of the audit, the ACAP did not have in its possession original canceled checks. As we discussed during the exit interview, your union is permitted to use a truncated checking account (an account in which original canceled checks are not returned to the account holder), only if the financial institution retains the original checks or complete, clear, and legible images of the front and back sides of original checks for the required five years, and provides the checks (originals or copies) to the union without substantial delay. As you were able to obtain copies of the requested checks in an expedient manner, this does not appear to be an issue that requires immediate attention. However, I recommend that you discuss with the bank the requirement that the records be maintained for five years, and ensure that the bank meets this requirement. If the bank does not maintain original or imaged canceled checks for five years, you must make arrangements for the local to do so.

Conclusion/Recordkeeping Violations

Adequate records were not maintained for financial transactions involving the ACAP, in violation of Section 206 of the LMRDA. Contemporaneous, accurate, and complete

records necessary to permit verification of the information required on your union's annual financial report must be preserved and kept available for examination for not less than five years after the report is filed.

The proper maintenance of union records is the personal responsibility of a union's president and treasurer. You should be aware that under the provisions of Section 209(a) of the LMRDA and Section 3571 of Title 18 of the U.S. Code, willful failure to maintain records can result in a fine of up to \$100,000 or imprisonment for not more than one year, or both. Under the provisions of Section 209(c) of the LMRDA and Section 3571 of Title 18 of the U.S. Code, willful destruction or falsification of records can also result in a fine of up to \$100,000 or imprisonment for not more than one year, or both. The penalties provided in Section 209(c) and Section 3571 of Title 18 apply to any person, not just the individuals who are responsible for filing the union's annual financial report.

As agreed, provided that in the future the ACAP maintains adequate documentation as discussed above, no additional enforcement action will be taken regarding these violations.

Reporting Violations

The CAP disclosed a violation of LMRDA Section 201(b), which requires labor organizations to file annual financial reports accurately disclosing their financial condition and operations within 90 days after the end of their fiscal year. The Labor Organization Annual Report (Form LM-3) filed by the ACAP for the fiscal year ending August 31, 2004, was deficient in the following areas:

- The reported cash figures do not balance (reconcile). Specifically, cash at the start of the year (Item 25(A)) plus total receipts (Item 44) minus total disbursements (Item 55) does not equal cash at the end of the reporting period (Item 25(B)). Either one or more of the reported figures is inaccurate or the cash shortage or overage must be explained in Item 56 (Additional Information).
- The majority of the union's dues receipts were misreported in Item 43 (Other Receipts). All dues should be reported in Item 38 (Dues).
- Disbursements for per capita tax were misreported in Item 54 (Other Disbursements). Per capita taxes should be reported in Item 47 (Per Capita Tax).

The ACAP's Form LM-3 for the fiscal year ending August 31, 2005, also misreported receipts and disbursements in the same manner as described above. Additionally, changes made to the cash figures reported on the prior year's Form LM-3 may affect the beginning cash figure on the 2005 report.

Conclusion/Reporting Violations

Like the proper maintenance of union records, the timely filing of a union's accurate and complete annual financial report is the personal responsibility of a union's president and treasurer or corresponding principal officers. You should be aware that under the provisions of Section 209(a) of the LMRDA and Section 3571 of Title 18 of the U.S. Code, willful failure to file reports can result in a fine of up to \$100,000 or imprisonment for not more than one year, or both. Under the provisions of Section 209(b) of the LMRDA and Section 3571 of Title 18 of the U.S. Code, the knowing falsification of a union's annual financial report, or the omission of material facts therefrom, can also result in a fine of up to \$100,000 or imprisonment for not more than one year, or both. The penalties provided in Section 209(b) and Section 3571 of Title 18 apply to any person, not just the individuals who are responsible for filing the union's annual financial report.

The ACAP must file amended Forms LM-3 for the fiscal years ending August 31, 2004 and 2005, to correct the deficient items discussed above. I have enclosed blank reporting forms and instructions, and I discussed with you the availability of these materials on the OLMS website (www.olms.dol.gov). The amended Forms LM-3 should be submitted to this office at the above address as soon as possible, but not later than July 31, 2006. Before filing, review the reports thoroughly to be sure they are complete, accurate, and signed properly with original signatures.

Other Violations

The audit revealed the following violations of LMRDA Section 502 (Bonding), which requires that union officers and employees be bonded for not less than 10 percent of the total funds handled by those individuals or their predecessors during the preceding fiscal year:

- The ACAP's officers and employees are currently bonded for \$5,000, but they must be bonded for at least \$5,640.81.

- The ACAP's bonding policy provides for a deductible of \$250. To be an acceptable bonding policy under the LMRDA, the policy may not have a deductible.
- Section 504 of the LMRDA prohibits individuals who have been convicted of certain crimes from holding union office or employment for up to 13 years after their conviction or the end of their imprisonment, if any. Section D(2) of the ACAP's bonding policy effectively excludes a person from coverage immediately upon discovery of any "dishonest act" committed by that person whether before or after becoming employed by the ACAP and regardless of when the act occurred and whether a conviction resulted. Therefore, in order to comply with the LMRDA in this area, the policy must be revised — or another policy must be obtained — so that it does not exclude from coverage persons eligible to hold union office or employment under the law.

The ACAP should obtain adequate bonding coverage for its officers and employees immediately. Please provide proof of bonding coverage to this office as soon as adequate coverage has been obtained, but not later than July 31, 2006.

Internal Financial Controls

Adequate internal financial controls are essential in order for a union to fulfill its obligations under Title II and Title V of the LMRDA. Besides those previously discussed, during our meeting I also encouraged the ACAP to implement the following internal financial controls:

- Ensure that there is a full understanding, either by the inclusion in the union's constitution and bylaws or in the form of membership or executive board authorizations recorded in meeting minutes, about the level of salary, allowances, and expenses (if any) to which the union's officers, employees, and members are entitled. This should include the requirement that all receipts be provided the union prior to reimbursement.
- Require that all checks drawn on the union's bank account have a second signature, regardless of the amount or purpose, and ensure that the cosigner fully understands that his/her fiduciary responsibilities require that the checks be signed only after they are completely filled out and the cosigner knows the purpose and legitimacy of each transaction.


Mr. Bill Nalepka
July 17, 2006
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I want to extend my personal appreciation to the Adrian College Association of Professors for the cooperation and courtesy extended during this compliance audit. I strongly recommend that you make sure this letter and the compliance assistance materials provided to you are passed on to future officers. If we can provide any additional assistance, please do not hesitate to call.

Sincerely,

Ian Burg, District Director

By:


Investigator

cc: Ms. Ann Theis, President